

REMARKS

This communication is responsive to the Final Office Action mailed on April 28, 2009 in which claims 1-12 and 19-20 were rejected and claims 13-18 were withdrawn from consideration.

The Examiner's withdrawal of the objections to the drawings is noted with appreciation.

With this Response, claims 1-12 and 19-20 are presented for reconsideration by the Examiner.

Election / Restriction

Claims 13-18 submitted on January 22, 2009 were made the subject of a species election by the Examiner. In particular, the Examiner identified claims 1-12 and 19-20 as belonging to species 1, and claims 13-18 as belonging to independent and distinct species 2. The Examiner withdrew claims 13-18 from consideration (page 3 of the Final Office Action mailed on April 28, 2009).

Applicant reserves the right, upon allowance of a generic claim, to the consideration and allowance of claims 13-18 to the extent that they depend from or require limitations of an allowable generic claim.

Status of Claims

The Final Office Action mailed on April 28, 2009 identifies at page 3 that claims 1-20 remain pending; claims 13-18 have been withdrawn from consideration; and claims 1-12 and 19-20 have been rejected and are the subject of the Final Office Action.

35 U.S.C. § 103 Rejections

Claims 1-12 and 19-20 were rejected under 35 U.S.C. § 103 as unpatentable over Jensen, US Patent No. 4,411,659 ("Jensen") in view of Nystrup, WO01/34072 ("Nystrup").

The present application relates to an ostomy bag including a pre-filter. The application teaches at paragraph 0003 that conventional pre-filters are formed from open cell foam, and that such foams are not easily standardized and have openings that are easily clogged.

Jensen discloses an ostomy bag including a filter. With reference to Figure 1, Jensen discloses a first wall 11 having an opening 16, a middle wall 13 having an opening 20, and an exterior wall 12 having an opening 23. The openings 16, 20, and 23 are spaced apart laterally to form a serpentine path (column 4, lines 25-35) configured to prevent solids from contacting the filter and prevent surges of gas that might otherwise rupture or damage the filter.

Nystrup discloses an automatic valve for ostomy bags including a foam 7 disposed between films 1, 3.

I. The Examiner Has Not Established a *Prima Facie* Case of Obviousness

A. The cited references, alone or in combination, fail to teach or suggest all claim limitations.

Independent claim 1 requires a pre-filter defining a gap between two opposed surfaces, at the constrictions, that is significantly smaller than the largest width of the constriction.

Independent claim 19 requires a gas path between the first surface and the second surface and the constrictive structure is positioned in the gas path a second distance from the first surface, wherein the second distance is less than the first distance and is selected such that a gap between the constrictive structure and the first surface functions as a filter to permit the flow of gas and hinder the flow of liquids, solids, and semi-solids towards an outlet of the pre-filter

The "gap between two opposed surfaces, at the constrictions" is illustrated in the pending application at Figure 2. Although the Examiner has offered an interpretation of Jensen based on the broadest reasonable reading of the instant application, which is appreciated, a fundamental difference between independent claim 1 and Jensen is easily identified by comparing Figure 2 of the pending application with Figures 5 and 7 of Jensen.

The Examiner interprets Jensen to provide a pre-filter illustrated in Figure 6 having two opposed, substantially liquid impermeable surfaces 30, 35 including there between a number of constrictions 32, 33. With reference to Figures 5 and 6, elements 30, 35 that the Examiner interprets to be opposed, liquid impermeable surfaces are in fact opposite sides of a circular flange 35. The flange 35 retains filter 26. If the Examiner is interpreting the "gap between two opposed surfaces, at the constrictions" to be the lateral distance between surface 30 and surface 35, then the gap between the two opposed surfaces, at the constrictions, is not smaller than the

largest width of the constriction, which directly contradicts independent claim 1. Jensen is silent on the issue of this dimension, as acknowledged by the Examiner at the top of page 5 of the Final Office Action.

However, the Examiner proposes at page 5 of the Final Office Action that the width and the distances cannot be determined from the drawings since the drawings in Jensen are not to scale. We believe this position to be irrelevant in that Jensen additionally discloses at column 5, lines 43-50 that the body section 27 of the holder includes flange 35 that projects forward from base wall 30 and, together with that base wall 30, defines a chamber or recess 36 for receiving filter 26. That is to say, even if the dimensions are indefinite due to not being drawn to scale, Jensen still expressly requires that the flange 35 (cited by the Examiner as including surfaces 30, 35 that allegedly provide the claimed "a gap between two opposed surfaces, at the constrictions") be of such a depth as to define a recess 36 for receiving filter 26. Consequently, we believe that any person of skill in the art would reasonably conclude that the gap distance between surface 30 surface 35 cited by the Examiner will always be larger than the largest width of the ribs that are disposed within flange 35 (see, e.g., Jensen at Figure 5).

Alternatively, if the Examiner is interpreting the "gap between two opposed surfaces, at the constrictions" to be the diameter of the opening formed in flange 35, then the gap between the two opposed surfaces at the constrictions could not reasonably be smaller than the largest width of the constriction, as required by independent claim 1. Those of skill in the art would recognize that this distance correlates to the diameter of the filter 26 retained within the flange 35, and that such filters have a diameter that precludes this dimension being smaller than the largest width of the constriction, as required by independent claim 1.

Thus, it is believed that independent claim 1 recites patentable subject matter, alone or in combination with Nystrup.

For similar reasons, it is believed that independent claim 19 recites patentable subject matter, alone or in combination with Nystrup, in that the references do not provide a gap between the constrictive structure and the first surface functions as a filter, as required by claim 19.

It is respectfully requested that the rejections to claims 1-12 and 19-20 under 35 U.S.C. § 103 as unpatentable over Jensen, alone or in combination with Nystrup, be withdrawn and these claims allowed.

B. The claimed pre-filter performs differently from the cited devices.

We specifically address the examiner's comments at item 15 located on page 5. The Examiner's comments are analogous to a device shaped like a screen. The Examiner argues that if the spacing between the screen ribs is too wide, then solid particles will pass the pre-filter and collect on the filter. In the alternative, the Examiner argues that if the spacing between the screen ribs is too narrow, then solid particles would collect on the pre-filter screen. Based on these arguments, the Examiner concludes that one of ordinary skill in the art would have recognized the benefit of optimizing the size of the ribs. We disagree for the following reasons.

The Examiner's argument detailed above in fact supports the applicant's position that the claimed pre-filter will perform differently than the ribs disclosed in Jensen and the valve disclosed in Nystrup. In particular, the ribs and Jensen and the Examiner's arguments are both analogous to a screen. As regards these screens, it could be expected that when the gap distance between two opposed surfaces of a gas channel, at the constrictions, is significantly smaller than the largest width of the constriction, that indeed such a screen would become clogged with particles. That is to say, the screen only has a filter depth that is as thick as the screen is deep – if a particle is small enough to pass the screen it will collect on the filter, and if a particle is large it will collect on the screen. This illustrates that the ribs and Jensen would perform differently than the claimed device which requires a gas channel defined by two opposed surfaces defining there between a number of constrictions and a distance defining a gap between the two opposed surfaces (see Figure 2 of the application as filed).

As a consequence, the Examiner's contention detailed at page 6 that the only difference between the cited references in the pending claims is the recitation of the "gap" dimension is not only incorrect, but in fact provides one distinguishing difference between the claimed subject matter in the cited references. Once again, this distinguishing difference can be appreciated by comparing Figure 2 of the instant application with Figure 7 illustrated in Jensen.

C. The Examiner's interpretation of the cited references includes error.

Independent claim 1 requires a gas channel defined by two opposed, substantially liquid impermeable surfaces. We disagree that Jensen provides a gas "channel" between surfaces 30,

35, based upon what one of ordinary skill in the art would understand a "channel" to mean, particularly in light of Figure 2 of the pending application in contrast to Figures 5 and 7 in Jensen. For this reason alone, he believed independent claim 1 recites patentable subject matter over Jensen, alone or in combination with Nystrup.

The above interpretation is supported by dependent claims 10 and 12. Dependent claim 10 requires that one of the opposed surfaces is defined by part of the wall of the bag. The Examiner cites to element 33 in Jensen as providing a surface of wall 12 of the bag. This interpretation contradicts the Examiner's assertion (page 4) that the gas channel 25 illustrated in Figure 6 of Jensen is defined by two opposed surfaces 30, 35. In any regard, element 33 is the back edge of a rib and is not "a part of the wall of the bag" as required by independent claim 10.

Dependent claim 12 requires that the distance of the gap is zero in a first state and greater than zero in a second state. The Examiner concedes that Jensen does not teach or suggest this feature, but cites to Nystrup in Figure 14 as illustrating constrictions 25, 26. Elements 25, 26 of Nystrup are embossed portions of a film. While we do not acquiesce to the modification of Jensen in view of Nystrup, we note that even if the references are so modified, that this modification would necessarily require the ribs of Jensen to have zero spacing, and thus form a solid impermeable wall in the flow path. No such unreasonable interpretation could form the basis of a rejection for obviousness under section 103.

Claim 20 further defines independent claim 19 and requires at least one channel positioned adjacent the at least one constrictive structure so that non-gaseous material flow encumbered by the gap is directed into the channel. None of the cited references teach or suggest at least this limitation.

For these reasons, it is believed that at least dependent claims 10, 12, and 20 recite patentable subject matter over the cited references.

D. The Examiner has misinterpreted Nystrup.

The Examiner takes the position at page 7 of the final office action that Nystrup discloses constrictions 26, 7 between surfaces 1, 3. We disagree.

First, Nystrup discloses that item 7 is a pressure plate formed of foam. The instant application teaches in paragraph 0003 that pre-filters made of foam have the potential to become

easily clogged. Consequently, modifying Jensen to include a structure having a gap distance on the order of a foam cell would render the ostomy appliance of Jensen unsuitable for its intended purpose of ensuring that a gas will pass through the filter. Note that Nystrup discloses at page 11, lines 15-17 that canals 26 are "hardly visible," and in addition, canals 26 do not extend between opposed impermeable surfaces 1, 3. In any regard, modifying Jensen to include canals 26 that are so small as to be hardly visible could be expected to result in clogging of the filter or clogging of the pre-filter.

CONCLUSION

Based on all of the above, it is respectfully requested that all rejections to claims 1-12 and 19-20 be withdrawn. We respectfully assert that the pending claims are in condition for allowance and notice of the same is requested. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned. The number of pending claims after this Response is entered will be fewer than twenty such that no additional fees are believed due at this time. However, the office is authorized to charge any fees actually due and credit any overpayment to deposit account 50-4439.

Respectfully submitted,

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